



08 MAR 2007

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In re Application of
JOHN BROWNIE et al.
U.S. Serial No.: 10/522,513
PCT Application No.: PCT/GB03/02832
Int. Filing Date: 01 July 2003
Priority Date: 27 July 2002
Attorney Docket No.: 10069.0006US1
For: CANINE RESPIRATORY
CORONAIVRUS (CRCV)....

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DECISION ON PETITION TO
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WITHDRAW HOLDING OF
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ABANDONMENT
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This is in response ¹ to applicants' "Second Request for Reconsideration of Decision on Petition to Withdraw the Holding of Abandonment", filed in the United States Patent and Trademark Office (USPTO) on 13 December 2006 in the above referenced application.

BACKGROUND

On 26 September 2005, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration was not in compliance with 37 CFR 1.497(a) and (b). On 21 November 2005, applicants filed an executed declaration.

On 7 February 2006, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed to applicant indicating that the declaration did not identify the citizenship of each inventor and thus, was not in compliance with 37 CFR 1.497(a) and (b).

On 23 May 2006, applicant made a status inquiry regarding this application using PAIR and discovered that the Notification of Defective Response had been issued on February 7, 2006.

¹It is noted that a revocation and power of attorney in this application was filed on 27 September 2006 and has been recorded in the USPTO. This decision is directed to both the previous law firm and the current law firm because the request for reconsideration was filed by the previous law firm, whose records are at issue in this matter.

Petitioner contacted the PCT Help Desk to inquire about the status of the application, and was advised that the application was abandoned for failure to respond to the 07 February 2006 Notification of Defective Response.

On 02 June 2006, applicant filed a Petition to Withdraw the Holding of Abandonment along with docket record for the instant application. On 22 June 2006, applicant filed a response to Notification of Defective Response along with a newly executed declaration.

On 25 August 2006, a decision dismissing applicant's petition was mailed indicating that Petitioner had not provided sufficient evidence of the nonreceipt of an Office action.

On 11 September 2006, Petitioner filed "Request for Reconsideration of Decision on Petition to Withdraw Holding of Abandonment". On 1 December 2006, a decision dismissing the petition was mailed indicating that Petitioner had not yet provided sufficient evidence of the nonreceipt of an Office action.

On 13 December 2006, Petitioner filed the instant petition along with the law firm's docket record for 7 March 2006.

On 27 February 2007, a Notification of Abandonment was mailed to applicant indicating that applicant had failed to respond to the 26 September 2005 Notification of Missing Requirements.

DISCUSSION

As previously stated, applicant petitions to withdraw the holding of abandonment for failure to timely respond to the Notification of Defective Response, which he alleges was never received until it was sent via facsimile by the PCT Help Desk.

As applicant is aware, in order to establish that papers were not received, as set forth in the Official Gazette at 1156 OG 53, applicant must provide the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement). See MPEP §711.03(c).

Counsel previously satisfied Item (1). Item (2) is satisfied with Counsel's statement that:

"a search was conducted of the file jacket and of JFM's [law firm's] docket records for the date that a response to the Notification of Defective Response ("Notice") was due (i.e. March 7, 2006). The result of said search indicates that the Notice was not received at the correspondence address of record on or before March 7, 2006."

With regard to item (3), Counsel's submitted a "true copy of JFM's docket records for the date that a response to the Notice was due (i.e. March 7 2006)". A review of the docket record for the due date of March 7, 2006 indicates that the Notification of Missing Requirements was not received. The petition under 37 CFR 1.181 is GRANTED. A review of the newly executed declaration submitted on 22 June 2006 reveals that it is in compliance with 37 CFR 1.497(a) and (b) and is acceptable.

CONCLUSION

For the reasons discussed above, the petition under 37 CFR 1.181 is **GRANTED**.

The 27 February 2007 Notification of Abandonment is hereby **VACATED**.

The application will be forwarded to the United States Designated/Elected Office for further processing. The newly executed declaration submitted on 22 June 2006 is in compliance with 37 CFR 1.497(a) and (b) and is acceptable. The 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date is **22 June 2006**.



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